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In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of:	)	
	)	Chapter 13 Case
JOHN WEBSTER	)	
ROBIN WEBSTER	)	Number <u>93-40163</u>
	)	
<i>Debtors</i>	)	

**MEMORANDUM AND ORDER**  
**ON MOTION FOR DISTRIBUTION OF FUNDS**

This matter comes before the Court on Debtors' Motion for Distribution of Funds. For the reasons set forth below, Debtors' Motion will be granted.

**FINDINGS OF FACT**

Debtors filed a petition under Chapter 13 of the Bankruptcy Code on January 29, 1993. On June 29, 1993, the Court confirmed Debtors' Chapter 13 plan, which requires Debtors to pay \$235.00 per month to the Chapter 13 Trustee. The plan is expected to yield a 100% dividend to unsecured creditors.

Prior to the commencement of their Chapter 13 case, Debtors were involved

in an automobile accident, in which Debtor, John Webster, sustained serious bodily injury. Debtors subsequently settled their claims stemming from the accident and brought a Motion to Allow Settlement, in which they sought approval of the settlement and possession of the net proceeds pursuant to an exemption which they claimed under O.C.G.A. § 44-13-100(A)(11)(D). By Order entered October 19, 1994, this Court approved the settlement and Debtors' claim of exemption, but directed the proceeds representing their exemption be paid to the Trustee pending completion of the their Chapter 13 plan. *See Matter of John and Robin Webster*, Ch. 13 Case No. 93-40163, slip op. (Bankr. S.D.Ga. October 19, 1994). The ruling was based upon section 522(c) of the Bankruptcy Code, which this Court read as requiring Debtors to complete their Chapter 13 plan before receiving cash payment representing their exemption under O.C.G.A. Section 44-13-100(A)(11)(D). Accordingly, the Trustee was directed to hold the funds representing Debtors' interest in the settlement pending completion of the plan.

On February 3, 1995, Debtors filed the Motion presently before the Court. In it, Debtors seek to apply the proceeds held by the Trustee to their Chapter 13 plan. In response, the Chapter 13 Trustee filed a Motion to Apply the Settlement Proceeds to General Unsecured Claims, in which she does not oppose distribution of the proceeds, but requests that she be allowed to pay the funds to the general unsecured creditors who have timely filed claims in the case.

At the hearing held on the Motions, counsel for Debtors indicated that they wanted the funds applied to their secured debts before being applied to any unsecured debts. The Trustee reiterated her request that the proceeds be distributed to unsecured creditors.

### CONCLUSIONS OF LAW

Debtors' confirmed Chapter 13 plan governs that order and priority of payments made by the Trustee to Debtor's creditors in this case. Confirmation of a Chapter 13 plan is *res judicata* as to any and all issues that were or could have been litigated at the confirmation hearing.<sup>1</sup> Debtors' confirmed plan provides that:

2. From the payments so received, the Trustee shall make disbursements as follows:

- (a) The priority payments required by 11 U.S.C. §507.
- (b) Secured creditors shall retain liens securing their claims. Creditors *who file claims* and whose claims are allowed as secured claims shall be paid the lesser of (1) the amount of their claim, or (2) the value of their collateral as set forth here:
- (c) Subsequent to secured creditors, dividends to unsecured creditors *who file claims* and whose claims are allowed (including the

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<sup>1</sup>See e.g., In re Szostek, 886 F.2d 1405, 1408 (3d Cir. 1989); In re Linkous, 990 F.2d 160, 162 (4th Cir. 1993); In re Howard, 972 F.2d 639, 642 (5th Cir. 1992); In re Evans, 30 B.R. 530, 531 (9th Cir. BAP 1983); In re Klus, 173 B.R. 51, 54 (Bankr. D.Conn. 1994).

unsecured balance of any partially secured debt) shall be paid:

*Check one:*

☐ In the following percentage of \_\_\_, or

☒ Pro-rata, from remaining funds in an amount to be estimated at confirmation.

Thus, because Debtors' confirmed Plan establishes the order and priority of distribution to creditors, the Trustee is barred from seeking to alter that priority. Accordingly, the Court will order the Chapter 13 Trustee to distribute the settlement proceeds currently in her custody in accordance with the terms of Debtors' confirmed Chapter 13 plan.

#### O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Chapter 13 Trustee distribute the settlement proceeds which she presently holds in the order and priority established by Debtors' Chapter 13 plan.

Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of May, 1995.